IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

OP.No. 3839 of 2001(F)

PETITIONER:

SMT.PADMAVATHI AMMAL
T.C.NO.50/853, KRISHNA NIVAS,
THALIYAL, KARAMANA-P.O.
TRIVANDRUM

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
ITS SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT,
TRIVANDRUM

2. ACCOUNTANT GENERAL (A & E)
KERALA INDIAN AUDIT & ACCOUNTS DEPARTMENT
M.G.ROAD, TRIVANDRUM.

BY GOVERNMENT PLEADER SMT.T.B.REMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON 16/11/2007 DELIVERED THE FOLLOWING:

O.P.No. 3839 of 2001(F)

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the proceeding dated 6.8.1997 effecting ratio promotion.

Ext.P1(a): True copy of the proceedings effecting regular promotion to the post of Assistant Director.

Ext.P2: True copy of the letter dated 23.9.1999.

Ext.P3: True copy of the seniority list indicating that Sri.V.Martin and others are juniors to the petitioner.

Ext.P4: True copy of pay slip of Sri.V.Martin as on 26.5.99.

Ext.P5: True copy of G.O.(P)No.220/2000/56/Fin. dated 25.1.2000.

Ext.P6: True copy of the letter dated 15.7.2000.

Ext.P7: True copy of the pay slip.

// True copy //

P.A. to Judge

jes

A.K.BASHEER, J.

- -

O.P.No. 3839 of 2001 (F)

- -

JUDGMENT

Dated, 16th November, 2007

A.K.BASHEER, J.

- -

O.P.No.3839 OF 2001

- -

Dated this the 16th day of November 2007

JUDGMENT

The short question that arises for consideration in this original petition is whether Ext.P2 order issued by respondent no.2 refusing to grant annual increment as claimed by the petitioner is legally valid and sustainable.

2. Petitioner retired from service as Assistant Director of Survey & Land Records from the Revenue Department on October 31, 1998. It is not in dispute that in May 1997, petitioner was granted ratio promotion while she was working as Technical Assistant. In other words, she was promoted to the higher scale of Rs.2200-75-2800-100-3500 from the earlier scale of pay of Rs.2000-60-2300-75-3200. Shortly after her ratio promotion in May, 1997 she got regular promotion as Assistant Director in June 1997. The grievance of the petitioner is that her annual increment which fell due in July 1997 was denied to her without any valid or justifiable reasons.

3. Respondent no.2 took the view that the petitioner was not entitled to her annual increment for two reasons.

a) she had been placed in a higher scale of pay by virtue of her ratio promotion in May 1997.

b) she got a regular promotion in June 1997 by which she went over to a higher cadre and scale of pay.

4. Learned Government Pleader while defending Ext.P2 order invites my attention to Rule 30 of Part I KSR and contends that the petitioner is not justified in clamouring for her annual increment which fell due in July 1997. According to the learned Government Pleader, the provisions contained in Rule 30 are squarely attracted in this case. Since petitioner's pay had been changed, she was treated as an entrant to a new post with a higher scale of pay. It is pointed out by the learned Government Pleader that in May 1997 just before the annual increment fell due, she was given ratio promotion and her pay was fixed as provided under Rule 28A Part I KSR. She further contends that refixation of petitioner's pay under Rule 28A Part I KSR is not permissible in the facts and circumstances of the case.

5. On the contrary, it is contended on behalf of the petitioner that she ought to have been granted annual increment irrespective of her promotion as had been done in the case of her juniors, namely Sri.Martin and Sri.Sreekantan Nair. Learned counsel points out that petitioner was denied the benefit of annual increment only because she was given ratio promotion and regular promotion just prior to the date when it fell due. But in the case of her juniors like Sreekantan Nair and Martin the department had not used the same yardstick. A perusal of Ext.P2 order which is impugned in this original petition shows that the above aspect was not considered by respondent no.2.

6. Learned counsel for the petitioner has also invited my attention to Ext.P6 communication dated July 15, 2000 declining the request made by the petitioner for re-fixation of pay and allowances with retrospective effect. No reasons have been stated by the Government in Ext.P6 communication as to why the request for re-fixation had not been considered. It is the case of the petitioner that under normal circumstances, she

would have got her annual increment in July every year. She was denied the annual increment for the year 1997 because of the ratio promotion given to her in May 1997. But in the case of Sri.Martin and Sri.Sreekantan Nair, the Department had granted annual increment. Of course they had got ratio promotion subsequent to the date when the annual increment fell due.

7. In the counter affidavit, respondent no.1 has stated that increment was allowed to the petitioner with effect from May 1996 when she completed one year after notional promotion to the post of Technical Assistant (Higher grade). But there is no mention about the annual increment, which under normal circumstances ought to have been granted to the petitioner in July 1997. The reasoning of the respondents appear to be that while fixing her pay under Rule 28A, consequent to the ratio promotion, petitioner had already got an increment and therefore there was no question of she being granted her annual increment. A perusal of Rule 28A will show that an officer holding a post in a substantive, temporary or officiating capacity

would be entitled to get his pay fixed in the higher time scale of pay by increasing actual pay in the lower scale drawn by him by one increment. The latter part of Rule 28A refers to refixation of pay whenever there is a change of pay in the lower time scale. It is contended by the learned counsel for the petitioner that at the time when the petitioner was granted ratio promotion as Technical Assistant (Higher Grade) she was put on a scale of pay of Rs.2200-3500. This fixation might have carried with it a notional increment as contemplated under Rule 28A. But the said increment is totally different from the annual increment which the petitioner was entitled to get under normal circumstances.

8. But the respondents would contend that since the petitioner had got an increment on fixation of her pay in the higher scale, she would be entitled to get her next increment only on completion of one year from the date of her ratio promotion. It is true that soon after the ratio promotion in May 1997, petitioner was promoted as Assistant Director in June 1997 in the scale of pay of Rs.2375-3500. Obviously, the scale of

pay of Assistant Director is higher than that of Technical Assistant (Higher Grade).

9. A perusal of Exts.P2 and P6 orders will undoubtedly show that there was no proper application of mind. It is true that the view taken by respondent no.2 in Ext.P2 has been accepted by the Government in Ext.P6 communication in a mechanical manner. Both these orders do not show that petitioner was given an opportunity to be heard. Learned Government Pleader submits that the stand taken by the respondents is totally justifiable. If Rule 30 is applied, petitioner can not claim increment for the year 1997, since she had already been granted increment when the pay was fixed under Rule 28A. But learned counsel for the petitioner contends that the Rule 30 has absolutely no application in this case. It would apply only in the case of pay fixation. In the case of the petitioner, there was no question of change of her pay since admittedly she was given ratio promotion to the post of Technical Assistant (Higher Grade) and still later she was promoted as Assistant Director.

10. I do not propose to deal with any of the above contentions raised by the parties. In any view of the matter, I am satisfied that the question whether the petitioner would be entitled to get her annual increment over and above the increment attached to the scale of pay after fixation under Rule 28A has to be considered afresh by the respondents. Similarly, the question of refixation as contemplated under Rule 28A has also to be considered. I am persuaded to take this view, since it has been brought to my notice that two of the juniors to the petitioner, namely Sri.Martin and Sri.Sreekantan Nair had been given similar benefits while the same was denied to the petitioner. Therefore, respondent no.1 has to necessarily address the issue in the light of the observations made above with particular reference to the cases of Sri.Martin and Sri.Sreekantan Nair.

In the above facts and circumstances, I am of the view that Exts.P2 and P6 are to be quashed. I do so. It will be open to the petitioner to submit a representation before respondent no.1 highlighting all relevant aspects of the issue, in which event

respondent no.1 shall consider the same in the light of the observations made above and also with reference to the relevant rules. This shall be done as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of the representation which shall be submitted by the petitioner within one month from today. Needless to mention that respondent no.1 shall ensure that petitioner is afforded sufficient opportunity to be heard before any decision is taken in the matter.

(A.K.BASHEER, JUDGE)

jes